

REMARKS

The Applicants appreciate the Examiner's thorough examination of the subject application. Applicants request reconsideration of the subject application based on the following remarks.

Claims 1 - 6 and 10 - 12 are currently pending in the application. Claims 7 - 9 and 13 - 17 have been withdrawn. Claims 1, 5 and 6 have been amended. No new matter has been added by the amendments to the Claims.

The specification has been amended on page 1 by replacing the title and adding information relating to priority claims. No new matter has been added by the amendments to the specification.

The Examiner objects to Claims 1-6 and 10-12 due to the informality of claims 1-6 and 10-12 as reciting non-elected material without further comment.

In paragraph 1 of the instant Office action, the Examiner acknowledges that Applicants have elected Group 1 directed to Claims 1-6 and 10-12 drawn to a method of detecting or measuring the amount of oxidative stress or damage in a subject having Alzheimer's Disease. Thus, Applicants request clarification as to the recitation of non-elected material.

Claims 1-6 and 10-12 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner states, " It is not clear from the claims as to what condition, level, prevalence or occurrence the oxidative stress markers must be in as to be diagnostic of Alzheimer's disease. Thus, the claims are incomplete."

Claim 1 has been amended to reflect that the amount of oxidative stress marker detected or measured from a subject suspected of having Alzheimer's disease would be higher than the amount detected from a subject not having Alzheimer's disease. The

higher amount that is detected or measured is diagnostic of Alzheimer's disease. Consequently, since claims 2-6 are dependent from Claim 1, Applicants submit that the amendment to Claim 1 obviates the Examiner's rejection under 35 U.S.C. 112, second paragraph for claims 1-6. Support for the amendment to Claim 1 can be found throughout the specification, particularly on page 5, lines 25-31 and page 6, lines 1-3.

Claims 10-12 currently recite a limitation comparing the amount of oxidative stress marker between controls and subjects with Alzheimer's disease. As such, Applicants submit claims 10-12 do not require amendment.

Claims 1-6 and 10-12 were rejected under 35 U.S.C. 102(b) as being allegedly anticipated U.S. 5,869,266 (Wolozin et al; 9 Feb 1999). Specifically, the Examiner states, "US 5,869,266 ('266) teaches a method of using olfactory neuron biopsies to measure APP as a method of diagnosing Alzheimer's disease in humans."

Applicants have amended claims 5 and 6 to delete any reference to APP and therefore submit that Claims 1-6 and 10-12 are not anticipated by the '266 patent. The law of anticipation is well settled to the effect that:

"A claim is anticipated only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP 2131. (Emphasis added)

Applicants wish to point out to the Examiner that on page 9, lines 29-31 and page 10, lines, 1-2 of the specification the following is stated; "Suitable markers of oxidative stress for use with olfactory neuron cultures include pentosidine, 8OHG, CML, HNE, HO-1, and other markers which illustrate a difference between olfactory neuron cultures obtained from Alzheimer's disease subjects as compared to olfactory neuron cultures obtained from normal subjects, including amyloid protein precursor.....". Thus, APP is not identified specifically as an oxidative stress marker, but rather as a marker which illustrates a difference between olfactory neuron cultures obtained from Alzheimer's disease subjects as compared to cultures from normal subjects. As such, with the deletion

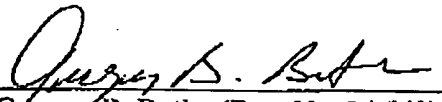
of any reference in the claims to APP, Claims 1-6 and 10-12 cannot be anticipated by the '266 patent.

In summary, reconsideration of this application and the allowance of Claims 1 thru 6 and 10 thru 12 of this application are respectfully requested for the reasons stated above.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. 04-1105, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

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